IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2188 OF 2004

Ajit Jamnadas Hingwala ...Petitioner

Versus

Devidas Vallabhdas Linani & Ors. ...Respondents

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Mr. S.M. Sakhardande with Mr. S.V. Lele, counsel for Petitioner

Mr.N.V.Bandiwadekar, counsel for Respondents 7 & 8.

Mr. D.A.Patil, A.G.P. for Respondent No.9.

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CORAM: B. H. MARLAPALLE, J.

DATED: 28TH MARCH, 2005

P. C.:-

1. Heard Mr. Sakhardande with Mr. Lele the learned counsel for the petitioner, Mr. Bandiwadekar, the learned counsel for respondent Nos. 7 and 8 and Mr. Patil, the learned A.G.P. for respondent No.9.

2. The petitioner is aggrieved by the order dated 23.1.2004 passed by the respondent No.9. There is no dispute that the said order is appealable. However, Mr. Sakhardande, the learned counsel for the petitioner submitted that before passing the impugned order, the respondent No.1 was guided by communication dated 30.9.2003 issued by the City

Survey Officer who is the superior authority to respondent No.9 and the appeal to be submitted by the petitioner may lie before the said Officer.

3. This apprehension need not come in the way of invoking the statutory remedy and when the statutory remedy of appeal is provided, it is well settled that a writ petition under Article 227 of the Constitution need not be entertained.

4. It is therefore, directed that if the petitioner submits an appeal against the impugned order dated 23.1.2004 within a period of four weeks from today, the same shall be heard and decided by the appellate authority on its own merits and without being influenced in any way by the communication dated 30.9.2003 addressed to the respondent No.9. Till the said appeal is decided on merits, the status quo in respect of the properties as set out in the impugned order shall be maintained and none of the share holders shall create any third party interest unless the said appeal is decided.

5. The petition is disposed of accordingly.